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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ELITE DINING SERVICES INC. et al., Plaintiffs and Respondents, v. RETHA CHAMPION, as Trustee, etc., et al., Defendants and Appellants.	B213992 (Los Angeles County Super. Ct. No. KC051668)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dan T. Oki, Judge. Affirmed.

Merhab Robinson & Jackson and James T. Jackson for Defendants and Appellants.

No appearance for Plaintiffs and Respondents.

Appellants the Champion Family Foundation (the Foundation), Retha Champion and Chris Champion were sued by respondents Elite Dining Services Inc. (Elite), George Peterson (Peterson) and Linda Peterson for breach of lease.[1] After a court trial, the court found that appellants improperly repudiated the parties' agreement by refusing to rent restaurant space to Elite. The court awarded Elite damages based on expenses incurred in anticipation of opening the restaurant. Appellants contend on appeal that the court erred by: (1) enforcing a modification to the lease agreement to which appellants had not assented; (2) enforcing an oral modification to the lease agreement which did not comply with the statute of frauds; and (3) permitting respondents to introduce into evidence to support damages documents that had not been produced during discovery.[2] We conclude that appellants' contentions lack merit and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Complaint and Cross-Complaint*

Respondents' complaint alleged that on October 14, 2005, the Foundation entered into a written agreement with Elite for the lease of restaurant space in a building located in Covina and that under the terms of the lease, the space was to

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[1] Respondents' initially sued the Champions in their individual capacity. Later, the complaint was amended to clarify that they were sued only in their capacity as trustees of the Foundation.

[2] No respondent's brief was filed. The rule we follow in such circumstances "is to examine the record on the basis of appellant's brief and to reverse only if prejudicial error is found. [Citations.]" (*Votaw Precision Tool Co. v. Air Canada* (1976) 60 Cal.App.3d 52, 55; accord, *Carboni v. Arrospide* (1991) 2 Cal.App.4th 76, 80, fn. 2.)

be available for use by March 1, 2006.[3] The complaint further alleged that the Foundation breached the lease by: (1) failing to have the space ready for occupancy by the specified date; and (2) serving "without any legal justification" a notice to quit on June 29, 2007.[4] Respondents alleged damages of approximately $110,000, representing the cost of various items of equipment and furniture purchased by Elite to operate the restaurant.

Appellants cross-claimed against respondents, agreeing that the Foundation had entered into a written lease with Elite on October 14, 2005, but contending that Elite, not the Foundation, had breached the lease. According to the cross-complaint, Elite failed to comply with its agreement to make "certain preparations for the operation of a malt shop on the [leased premises]," including "hiring [] a licensed architect to draw up plans for the construction of the Premises" and obtaining approval of the plans by the necessary governmental agencies. In addition, Elite allegedly failed to indemnify the Foundation for the purchase and installation of a hood exhaust system, for the purchase and installation of tile, and for revising Elite's electrical and plumbing layout plans. The cross-complaint alleged that as a result of respondents' failure to pay "contractors, sub-contractors, and/or vendors for work performed in a timely manner" or to indemnify the Foundation, the Foundation had been damaged in the amount of $17,729.

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[3] Respondents' complaint also included claims for fraud, negligent misrepresentation and interference with prospective economic advantage. None of those claims is at issue in this appeal.

[4] Attached to the complaint was a copy of a three-day notice to quit addressed to Elite, dated June 29, 2007. The notice stated: "You are hereby notified that in accordance with the lease dated October 14, 2005 . . . you failed to perform the following provision: Payment to all vendors/contractors providing goods or services at the leased premises."

Attached to both the complaint and the cross-complaint was a two-page written lease, executed on October 14, 2005 by the Champions on behalf of the Foundation and by the Petersons on behalf of Elite. The lease stated that its term would be for three years commencing March 1, 2006 and ending February 28, 2009. Below the March 2006 commencement date, the words "or when available for business" were handwritten. Under the terms of the lease, rent was to be $1,200 per month the first year, $1,500 per month the second year, and $1,750 per month the third year. There was an option to renew for an additional three years. The lease stated that the Foundation "agrees to install all electrical and plumbing, per [Elite's] specifications."

B. *Evidence at Trial*

The parties' respective breach of contract claims were tried to the court. Peterson testified on behalf of Elite. The Foundation called as witnesses the Champions and George Hagelis, the owner of Alpha Omega Construction Company (Alpha Omega), the contractor hired by the Foundation to construct the Covina Performing Arts Center, the building in which the restaurant was to be located.[5] The following facts, taken from the trial court's findings, were established by the evidence presented.

On or about October 14, 2005, the Foundation and Elite entered into a written lease for a portion of the not yet constructed Performing Arts Center. The lease had a term of three years with an option to renew for an additional three years. Elite intended to use the premises to operate a malt shop. Under the

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[5] According to the testimony, the Foundation and Alpha Omega originally anticipated renovating an existing building to create the Performing Arts Center. Instead, it became necessary to tear out most of the existing structure and several neighboring structures. This led to substantial delays in completing construction.

agreement, the Foundation was obligated to build the interior of the leased premises and Elite was obligated to provide plans that would enable the Foundation to determine where to place plumbing and electrical outlets. Although the lease had a commencement date of March 1, 2006, "both parties understood that the building [might] not be completed by that date and orally agreed that the three-year term would commence, and rent would begin to be paid, as soon as construction was completed and Elite occupied the leased premises."[6]

After the lease was executed, Elite agreed to pay the cost of special floor tiles and one-half the cost of an exhaust/fire suppression system for the kitchen.[7] In addition, Alpha Omega performed work at Peterson's request, including obtaining governmental approval for Elite's plans and replacing an installed single entry door with double doors. "There was [] confusion on the part of Alpha Omega as to whether Elite or the Foundation should pay for this additional work." Sometime in June 2006, Mrs. Champion paid a 50 percent deposit for the exhaust system and gave a copy of the invoice to Peterson. In addition, on June 19, 2007, Alpha Omega sent Elite a document apparently intended to be an invoice for the exhaust/fire suppression system, tile flooring and the other work performed on Elite's behalf. However, the document stated that it was an "estimate" and included items having nothing to do with the work performed for Elite.

Peterson and Hagelis arranged a June 29 meeting to discuss Alpha Omega's invoice. On June 27, before the meeting could take place, an incident occurred at

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[6] Both Peterson and Mrs. Champion testified that the lease was signed long before the building was constructed, because Peterson needed a written lease to support his application for a grant from the City of Covina.

[7] Both Peterson and Mrs. Champion testified to the existence of an oral agreement under which Elite would pay one-half the cost of the purchase and installation of the exhaust/fire suppression system and the purchase cost of the floor tiles.

the premises, then still under construction. Elite's workers were installing counters and cabinets at the same time the tile installers were attempting to complete laying the special floor tiles purchased for Elite. Hagelis believed Elite's workers were in the way of the tile installers and ordered Elite's workers to leave. Peterson arrived and got into a heated argument with Mrs. Champion, who was also present. Mr. Champion arrived and ordered Peterson to leave. On June 29, Mr. Champion met with Peterson and accused him of failing to pay Elite's share of the construction expenses. Mr. Champion said that the Foundation would never allow Peterson's restaurant to occupy the premises. Later that day, the notice to quit was posted by the Foundation.

The court concluded, based on the evidence, that the parties had a valid agreement that was partially written and partially oral. The oral portions included a term delaying commencement of the lease until the building was ready for occupancy, an agreement to share the cost of purchasing and installing the exhaust/fire suppression systems and an agreement under which Elite was to pay for the purchase of the floor tiles. The court concluded that on June 29, 2007, the day the Foundation posted the notice to quit, Elite was not in breach of its agreement to pay its share of the construction expenses. The court found that payment was not yet due because the exhaust system was not operational and the tiles had not been fully installed.[8] The court further concluded that even assuming Elite was in breach for failure to pay its share of the expenses, it was not presented

[8] In its written findings of fact, the court pointed out that "no evidence was presented to demonstrate that claims or threats had been made against the Foundation for the failure of Elite to meet its obligation under the lease" or that "any contractor or material supplie[r] imposed or threatened to impose a mechanic's lien upon the project for the failure of Elite to pay a bill." The court further noted that Mrs. Champion had testified the Foundation did not pay the 50 percent remaining due for the exhaust system until August 2007.

with the Alpha Omega bill until June 19 and "such a brief delay did not constitute a sufficiently material breach of the lease to justify its termination."[9] Therefore, "the Foundation's declaration of a forfeiture of the lease . . . constituted a breach of the lease by the Foundation."

The court awarded Elite judgment on its breach of contract claim against the Foundation. With respect to damages, the court found that Elite had sustained damages in the amount of $111,678.28, the amount paid for kitchen equipment, furniture and other items and services purchased in anticipation of opening the restaurant. The court granted Elite judgment in that amount but ordered Elite to deliver these items to public auction for sale: "All net proceeds after deduction of commission and costs of sale are to be a credit against the judgment." Counsel for

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[9] As explained by Witkin, any breach that causes a measurable injury, gives the injured party a right to damages, but only a "material" breach is "a ground[] for termination by the injured party." (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 852, p. 938.) Whether a breach is material depends on "the importance or seriousness thereof and the probability of the injured party getting substantial performance." (*Id*., p. 939.) "Even a slight breach at the outset of the performance may justify termination, for it indicates future difficulty in obtaining performance, and termination at that time is not so serious in its effect upon the wrongdoer. [Citations.]" (*Ibid*.) However, "[a]fter considerable performance, a slight breach that does not go 'to the root' of the contract will not justify termination. [Citations.]" (*Ibid*.; see, e.g., *Integrated, Inc. v. Alec Fergusson Electrical Contractor* (1967) 250 Cal.App.2d 287, 297 [with respect to a construction contract, "[a] slight deviation either in time or amount of progress payments should not justify rescission or abandonment"]; *Karz v. Department of P. & V. Standards* (1936) 11 Cal.App.2d 554, 557 [failure of homeowner to pay contractor for extra material and labor under oral supplemental agreement did not justify contractor's abandonment of written contract to construct dwelling because "failure to perform a subsidiary act under a contract will not ordinarily justify a rescission unless it is of such character as to evince an intent on the part of the person in default to abandon the contract or to be no longer bound by its terms"].) "Whether a breach is so material as to constitute cause for the injured party to terminate a contract is ordinarily a question for the trier of fact." (*Whitney Inv. Co. v. Westview Dev. Co*. (1969) 273 Cal.App.2d 594, 601.)

Elite was directed to "serve and file an acknowledgement of partial satisfaction of the judgment in that amount."

DISCUSSION

A. *Mutual Assent*

At trial, Peterson testified that he was responsible for handwriting the phrase "or when available for business" on the lease agreement. He testified that he had called Mrs. Champion in April 2006 because he was concerned that the lease had become "active," but the building to house the restaurant had not yet been constructed. Mrs. Champion suggested that he write those words or something similar on the lease.[10] Peterson did, but failed to send a copy to appellants or to obtain their signatures or initials on the change.

Appellants contend based on Peterson's testimony that there was no valid lease because there was no mutual assent to the modified agreement. To support their contention, appellants rely on the well-known principle of contract law, codified in Civil Code section 1585, that "[a]n acceptance [of an offer to contract] must be absolute and unqualified" and that "'[a] qualified acceptance is a new proposal.'" (See also 1 Witkin, *supra*, Contracts, §§ 183, 185, pp. 218-220.) Appellants maintain that because Peterson "made a material change to the Lease following its execution by Champion, the revised document became, at most, a counteroffer to enter into a lease."

Appellants' argument rests on the premise that Peterson did not discuss the change with appellants or obtain their oral consent to it. Peterson testified to the contrary, and the trial court specifically found that the parties "orally agreed that

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[10] Mrs. Champion denied having had this conversation with Peterson. She testified, however, that she believed from the beginning the March 2006 start date was unrealistic and could not be met.

the three-year term would commence, and rent would begin to be paid, as soon as construction was completed and Elite occupied the leased premises." Appellants describe Peterson's testimony as "self-serving," but however characterized, the testimony supported the trial court's finding, and this court cannot overturn a finding supported by the evidence.[11] (See *People v. Robertson* (1989) 48 Cal.3d 18, 44 ["[T]he testimony of a single witness is sufficient to establish a fact."].)

Moreover, it was not solely Peterson's testimony that supported the trial court's finding of a modification of the lease's commencement. The evidence was unequivocal that long after the March 2006 date came and went, appellants and their contractor were working with Peterson to get Elite into the yet-to-be-completed restaurant space. The Foundation's contractor built the interior to Peterson's specifications.[12] The Champions entered into an oral agreement with Peterson under which the parties would split the cost of the fire suppression/exhaust system and Elite would pay for the purchase of the floor tiles.[13] Therefore, whether or not appellants verbally assented to the modification, their conduct supported the existence of mutual assent to an agreement to delay

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[11] Moreover, even if the evidence were undisputed that Peterson added these words without the knowledge or consent of appellants, appellants' conclusion that "[n]o valid lease was entered into between the parties" would not follow. Peterson added the words to the lease in April 2006, many months after both parties executed the October 2005 agreement. Interlineations or changes made by one party before signing may constitute a counteroffer or new proposal. (See, e.g., *Bartone v. Taylor-Benson-Jones Co., Ltd.* (1953) 119 Cal.App.2d 79; *Angus v. London* (1949) 92 Cal.App.2d 282.) A unilateral change made on a copy of a written agreement (or a duplicate original) after both parties have assented to its terms can have no impact on the agreement or its validity.

[12] Peterson testified, for example, that Alpha Omega installed double doors in order to accommodate Elite's equipment in February 2007.

[13] The date of the agreement is not clear from the witnesses' testimony, but Hagelis testified the exhaust/fire suppression system was installed sometime after September 2006.

commencement of the lease start date. (See *Diamond Woodworks, Inc. v. Argonaut Ins. Co*. (2003) 109 Cal.App.4th 1020, 1038 disapproved in part on other grounds in *Simon v. San Paolo US Holding Co., Inc.* (2005) 35 Cal.4th 1159 [where written employee leasing contract required completion of paperwork and written approval of leasing company before new employees were hired on its behalf by client company, but parties "not only abandoned or ignored the provisions dealing with the processing of new employees, but, postagreement, substituted a course of conduct wholly incompatible with those provisions," the facts presented "a textbook case of modification by conduct"].)

B. *Statute of Frauds*

Appellants contend in the alternative that the change in the commencement date was invalid because the Champions' assent was required by law to be in writing. The statute of frauds, Civil Code section 1624, provides that "[a]n agreement for the leasing [of real property] for a longer period than one year" is "invalid" unless "the [contract] or some note or memorandum thereof, [is] in writing and subscribed by the party to be charged . . . ." Section 1698 of the Civil Code provides that in the case of a modification to a written contract, "[t]he statute of frauds (Section 1624) is required to be satisfied if the contract as modified is within its provisions."

There is no question that the statute of frauds requires a lease for a term of more than one year to be in writing or supported by a writing. (*Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 873-877 [rejecting contention that possibility of termination of lease within one year caused oral multi-year lease agreement to fall outside statute of frauds].) But the statute is subject to numerous exceptions. Applicable here is the rule that a party is estopped to raise the statute of frauds if he or she "by

. . . words or conduct represents that he or she proposes to stand by the oral contract, and the plaintiff, in reliance thereon, changes his or her position." (1 Witkin, *supra*, Contracts, § 406, p. 445; accord, *Estate of Housley* (1997) 56 Cal.App.4th 342, 352; see Civ. Code § 1698, subd. (d); *Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623 ["The doctrine of estoppel to assert the statute of frauds has been consistently applied by the courts of this state to prevent fraud that would result from refusal to enforce oral contracts in certain circumstances. Such fraud may inhere in the unconscionable injury that would result from denying enforcement of the contract after one party has been induced by the other seriously to change his position in reliance on the contract . . . ."].) Here, the court found that Peterson relied on the existence of the lease to purchase and begin installing over $100,000 worth of restaurant furnishings and equipment in anticipation of opening the restaurant when the Performing Arts Center was completed. Appellants cannot claim to have been unaware of Peterson's reliance, as he was in constant communication with appellants and their contractor.[14] In addition, some of Peterson's equipment -- e.g., the counters and the refrigerator -- had already been installed on the premises.[15] Because appellants' words and conduct caused Peterson to believe the lease would commence to run when construction was completed in accordance with the parties' oral agreement, they are estopped to assert the statute of frauds.

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[14] Peterson testified that he and Hagelis were meeting several times a week in February, March and April 2007. Mrs. Champion testified that Peterson's communications about progress, which began in July 2006, had reached the point of becoming an annoyance.

[15] Peterson and Hagelis testified that in June 2007, Elite installed several large pieces of equipment, including the freezer, and was in the process of installing the counters.

Further, what at first glance appears to be an oral modification may be more properly construed as a waiver of a provision of the written agreement. (See, e.g., *Body-Steffner Co. v. Flotill Products* (1944) 63 Cal.App.2d 555, 565-566 [contractual dates for delivery of goods waived by oral agreement of parties].) The parties' written lease agreement had a start date of March 1, 2006. Pursuant to the agreement, on that date Elite had an obligation to commence paying rent and the Foundation had an obligation to provide the agreed rental space. Instead, the parties agreed to delay the effective commencement date of the lease until construction was completed.[16] Their agreement can thus be construed as a waiver of both parties' right to timely performance under the written lease. Such a waiver is not subject to the statute of frauds. (See Civ. Code, § 1698, subd., (d) ["Nothing in this section precludes in an appropriate case the application of rules of law concerning . . . waiver of a provision of a written contract . . . ."]; *Panno v. Russo* (1947) 82 Cal.App.2d 408, 412 ["It is well settled that the rule against varying the terms of a written instrument by parol or seeking to alter a contract in writing other than by a contract in writing or an executed oral agreement, is subject to the exception that a party to a contract may by conduct or representations waive the performance of a condition thereof."].) In short, whether the parties' agreement to delay commencement is viewed as an oral modification of the written lease or as a waiver of the parties' mutual right to timely performance, respondents' claims for breach of the lease were not barred by the statute of frauds.

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[16] Mrs. Champion testified that the Foundation did not receive a certificate of occupancy until August 2007.

C. *Documents Introduced at Trial*

In August 2008, approximately two months prior to trial, appellants served document production requests on respondents. Appellants requested among other things, all documents supporting the allegation that Elite expended in excess of $110,000 for items and services purchased in anticipation of opening the malt shop. Appellants received unsatisfactory response to the requests and moved to compel. Respondents and their attorney were ordered to respond fully and to pay sanctions to appellants. Respondents did not provide additional responses as ordered and in October 2008, just prior to trial, appellants moved in limine to exclude documents not produced by respondents "during discovery." In their opposition, respondents stated that the documents they intended to use at trial to support damages had been produced at the Petersons' depositions, with the exception of a few checks. At the hearing, the court stated that the issue of excluding respondents' damage documents would be discussed as each was identified over the course of trial. If respondents attempted to introduce documents that appellants' counsel had "never seen" or that were "different than what was produced at the depositions," counsel was invited to bring that to the court's attention. The court made clear its intent to rule on each objection individually. Appellants contend that the court's procedure for dealing with documents not produced, as well as its specific rulings on individual documents, constituted error. We disagree.

Under Code of Civil Procedure section 2023.030, subdivision (c), a court "may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in

evidence."[17] The trial court's discretionary power to impose evidence sanctions or any other discovery sanctions is broad, "'subject to reversal only for arbitrary, capricious, or whimsical action.'" (*Parker v. Wolters Kluwer United States, Inc*. (2007) 149 Cal.App.4th 285, 297, quoting *Calvert Fire Ins. Co. v. Cropper* (1983) 141 Cal.App.3d 901, 904) or for "'manifest abuse exceeding the bounds of reason'" (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293, quoting *American Home Assurance Co. v. Société Commerciale Toutéletric* (2002) 104 Cal.App.4th 406, 435).

Appellants apparently believe the trial court abused its discretion by refusing to issue a blanket prohibition on the introduction of any documents responsive to the document requests, without regard to whether the documents had been provided to appellants or their counsel at the Petersons' depositions. "'Discovery sanctions "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." [Citations.] "'. . . [T]he court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose punishment. [Citations.]'" [Citations.]'" (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545, quoting *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, 487-488.) Here, the court's ruling was in line with the goals of the discovery statutes. Respondents may not have properly responded to appellants' documents requests, but they did provide the documents related to damages during the course of pre-trial discovery, allowing appellants' counsel to question the Petersons about them during their depositions. The court's ruling permitting introduction of damage exhibits turned over at the depositions, but no others, "protect[ed] the

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[17] "Misuse[] of the discovery process" is defined to include: "Failing to respond or to submit to an authorized method of discovery" and "Disobeying a court order to provide discovery." (Code Civ. Proc., § 2023.010, subds. (d) and (g).)

interests" of appellants and "accomplish[ed] the objects of discovery." (See, e.g., *Lee v. Lee* (2009) 175 Cal.App.4th 1553, 1558-1559 [trial court did not abuse discretion when it permitted party to introduce into evidence important documents provided to opposing party only five days prior to trial].)

With respect to the specific rulings made by the trial court, appellants' brief creates several misimpressions. First, they imply that documentary evidence "not produced during discovery" composed the "basis for the trial court's determination of damages for Elite." In fact, of the documents that comprised the support for Elite's damage claims -- exhibits 33 through 71 -- appellants objected to very few on the ground that they had not been produced during discovery. Appellants' counsel stipulated to the admission of, or did not object to, exhibits 43, 48, 49, 51 through 56, 58, 59, 62, 65 through 67, 70 and 71. Counsel objected to exhibits 36, 37, 42, 44, 45, 50, 60, 61, 64 and 69 on the ground of lack of foundation only. Counsel objected to exhibits 40, 41, 46 and 50 solely because of legibility concerns. The only objections based on a failure to produce that counsel raised with respect to the damage exhibits were to exhibits 33, 38 and 39.[18] The court overruled the objection to exhibit 38 because the document had been brought up for the first time during cross-examination of Peterson. Appellant's counsel withdrew exhibit 39, a bill from Verizon and copies of three checks written by

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[18] Earlier in the trial, appellants' counsel had objected to exhibits 1, 3, 13 and 31 on the ground that they had not been produced during discovery. Appellants do not raise any issues concerning these exhibits in their brief. In any event, we note that the trial court immediately sustained the objection to exhibit 1 and with respect to exhibit 3, instructed respondents' counsel to move to another subject area until the status of the document could be ascertained. Respondents' counsel withdrew exhibit 13 as soon as the objection was raised. Of this group, the only exhibit admitted into evidence was exhibit 31, which the court permitted despite the failure to produce it to appellants earlier because it was an e-mail prepared and sent by appellants' own counsel.

Elite. Exhibit 33, a summary of the damages allegedly suffered by Elite, apparently newly prepared, was not offered into evidence.

Appellants further contend that the court "permitted Mr. Peterson to testify to the subject matter of [documents not produced during discovery], thereby bringing the evidence in through the back door." The only documents about which this might be said are exhibits 33 (the summary) and 39 (the Verizon bill and three miscellaneous checks). But appellants raise no specific contentions about these documents and do not suggest that the court's damages calculation, or any component of it, depended on these documents or that other documents introduced and discussed by Peterson were insufficient to sustain the court's findings as to damages.

Finally, appellants contend that they were "prevented from conducting pretrial discovery regarding the value of the items that Elite claimed as damages"; "unable to conduct discovery to determine that the items were in fact purchased for the [malt shop] and not for [] another restaurant that Elite owns"; and "unable to discover whether Elite took any steps to mitigate its damages by selling the property or discontinuing the services when it became apparent that the relationship broke down." As the trial court implicitly found, appellants had an opportunity to conduct pretrial discovery into those areas during the Petersons' depositions. Moreover, their counsel had ample opportunity to cross-examine Peterson concerning these matters at trial. The court's rulings did not unfairly hamper appellants' ability to present their defense and cross-claim.

DISPOSITION

The judgment is affirmed. Each party is to bear its respective costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.